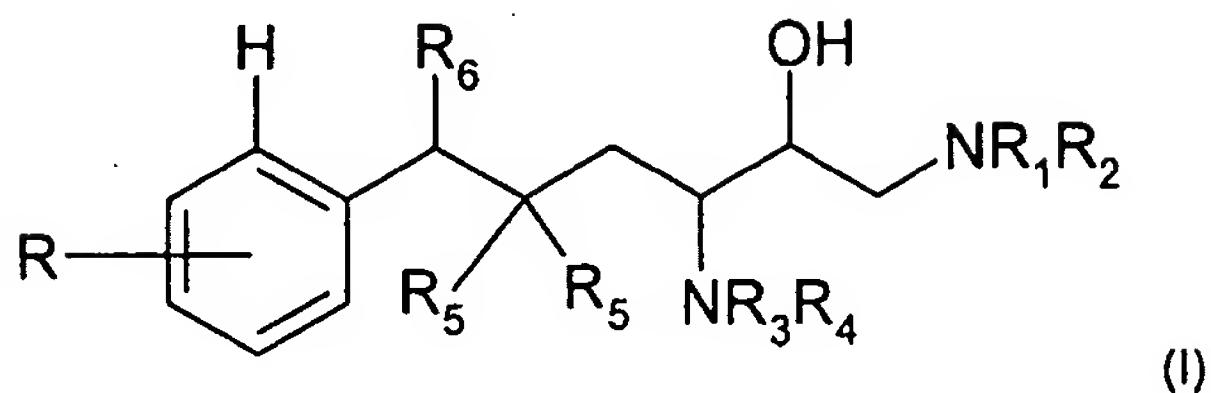


1. Compound of the formula



where

R_1 is a) ~~hydrogen, hydroxyl or amino; or~~
 b) ~~C_1-C_8 -alkyl, C_3-C_8 -cycloalkyl, C_1-C_8 -alkanoyl, C_1-C_8 -alkoxycarbonyl, aryl- C_0-C_4 -alkyl or heterocyclyl- C_0-C_4 -alkyl, which radicals may be substituted by 1-4 C_1-C_8 -alkyl, halogen, oxo, cyano, trifluoromethyl, C_1-C_8 -alkoxy, C_1-C_8 -alkoxycarbonyl, aryl or heterocyclyl;~~

R_2 is a) ~~C_1-C_8 -alkyl, C_3-C_8 -cycloalkyl,, aryl or heterocyclyl; or~~
 b) together with R_1 and the nitrogen atom to which they are bonded is a saturated or partly unsaturated, 4-8-membered, heterocyclic ring which may contain an additional nitrogen, oxygen or sulphur atom or an -SO- or -SO₂- group, and the additional nitrogen atom may optionally be substituted by C_1-C_8 -alkyl, C_1-C_8 -alkanoyl, C_1-C_8 -alkoxycarbonyl, aryl or heteroaryl radicals, in which case this heterocyclic ring may be part of a bicyclic or tricyclic ring system having a total of up to 16 members and the second ring may also contain a nitrogen, oxygen or sulphur atom or an -SO- or -SO₂- group, and the nitrogen atom of the second ring may optionally be substituted by C_1-C_8 -alkyl, C_1-C_8 -alkanoyl, C_1-C_8 -alkoxycarbonyl, aryl or heterocyclyl radicals, and all ring systems mentioned may be substituted by 1-4 C_1-C_8 -alkyl, halogen, hydroxyl, oxo, trifluoromethyl, C_1-C_8 -alkoxy; C_1-C_8 -alkoxy- C_1-C_8 -alkyl, C_1-C_8 -alkoxy- C_1-C_8 -alkoxy, C_1-C_8 -alkoxycarbonylamino, C_1-C_8 -alkanoylamino, C_1-C_8 -alkylamino, N,N-di- C_1-C_8 -alkylamino, aryl- C_0-C_4 -alkyl, aryloxy- C_0-C_4 alkyl, aryl- C_0-C_4 -alkyl- C_1-C_8 -alkoxy, aryloxy- C_0-C_4 -alkyl- C_1-C_8 -alkoxy, heterocyclyl- C_0-C_4 -alkyl, heterocyclxyloxy- C_0-C_4 -

alkyl, heteroaryl-C₀-C₄-alkyl-C₁-C₈-alkoxy or heterocyclyloxy-C₀-C₄-alkyl-C₁-C₈-alkoxy;

R₃ is hydrogen, C₁-C₄-alkyl, C₁-C₈-alkoxycarbonyl or C₁-C₈-alkanoyl;

R₄ is hydrogen, C₁-C₄-alkyl, C₁-C₈-alkoxycarbonyl or C₁-C₈-alkanoyl;

R₅ is in each case independently hydrogen, C₁-C₈-alkyl, or, together with the carbon atom to which they are bonded, are a C₃-C₈-cycloalkylidene radical;

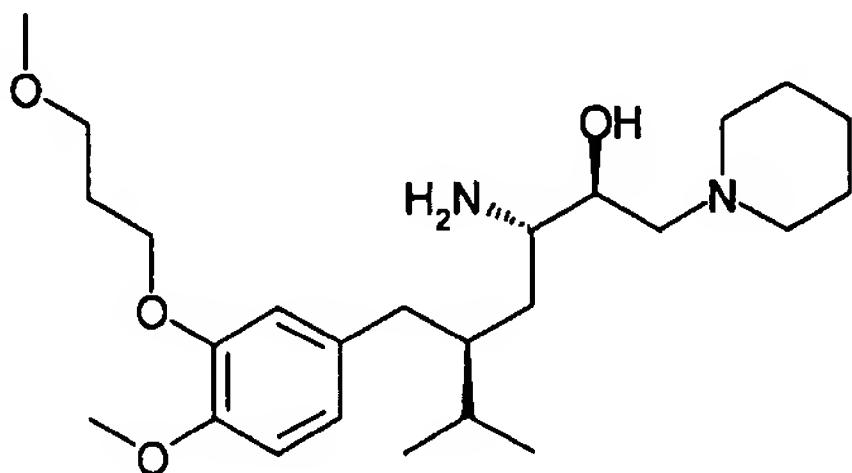
R₆ is hydrogen or hydroxyl;

R, in each case independently, are 1-4 radicals selected from:

hydrogen, halogen, C₁-C₈-alkyl, 3- to 8-membered cycloalkyl, ,

or salt or prodrug thereof, or where one or more atoms are replaced by their stable, non-radioactive isotopes, preferably pharmaceutically usable salt thereof.

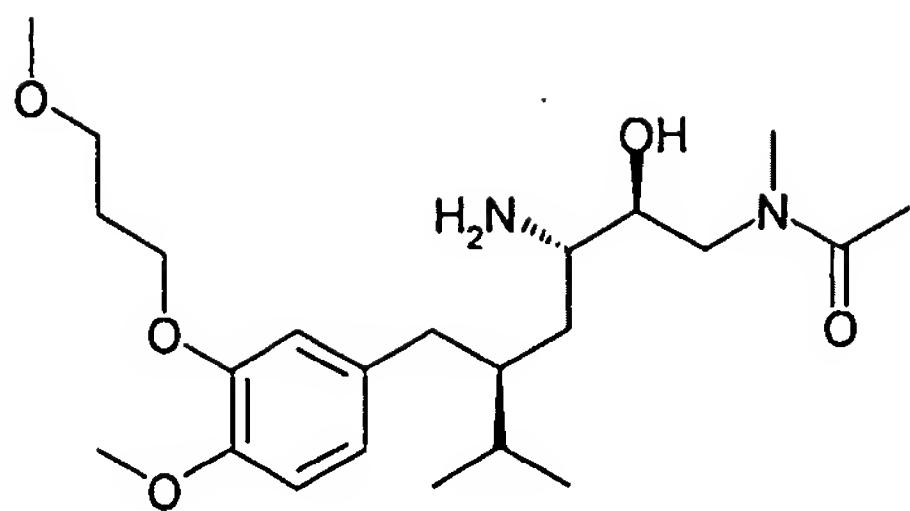
It seems that the Examiner requires Applicants to limit the scope of the claims based on the elected species of instant Example 1, namely:



Applicants respectfully decline to comply with this requirement, based on the considerations set forth below.

First, the analysis of the Examiner appears to not be convincing, as the elected species does fall under the definition that R² together with R¹ and the nitrogen atom to which they are bonded is a heterocyclic ring, and not under R¹ being heterocycl-C₀-C₄-alkyl (or R² being heterocycl).

Second, the instant claims cover Examples whereby R² together with R¹ and the nitrogen atom to which they are bonded do not form a heterocyclic ring, however, represent examples, whereby R¹ and R² are different, e.g. instant Example 34:



whereby R^1 is covered by $\text{C}_1\text{-C}_8\text{-alkyl}$, and R^2 is covered by $\text{C}_1\text{-C}_8\text{-alkanoyl}$ (or vice versa).

Third, in view of the fact that the Examiner raised an additional restriction requirement, this gives Applicants a further opportunity to traverse the restriction requirement. The Examiner relied previously on Annex (B) of the PCT rules, however, according to which unity between compound claims and use claims is given as far as they are linked by the technical relationship among the claimed inventions involving one or more of the same or corresponding special technical features.

Extract from the "PCT INTERNATIONAL SEARCH AND PRELIMINARY EXAMINATION GUIDELINES", chapter 10:

"Examples Concerning Unity of Invention

10.20 The application of the principles of unity of invention is illustrated by the following

examples for guidance in particular cases.

Claims in Different Categories

10.21 *Example 1*

Claim 1: A method of manufacturing chemical substance X.

Claim 2: Substance X.

Claim 3: The (method of) use of substance X as an insecticide.

Unity exists between claims 1, 2 and 3. The special technical feature common to all the claims is substance X. However, if substance X is known in the art, unity would be lacking because there would not be a special technical feature common to all the claims."

In the instant case, the common feature between the compound claims and the "use" claims are the compounds of instant formula I. So far the Examiner has failed to demonstrate why he considers that three inventions are present. To merely rely on different search classes can not be accepted.

For these reasons, Applicants take the position that the claim objections should be withdrawn.

The Commissioner is authorized to charge any deficiency or to credit any overpayment associated with this communication to Deposit Account No. 23-0975, with the EXCEPTION of deficiencies in fees for multiple dependent claims in new applications.

Respectfully submitted,

Peter HEROLD et al.

For: Michael R. Davis 10BF
Michael R. Davis
Registration No. 25,134
Attorney for Applicants

By: Andrew B. Freistein
Andrew B. Freistein
Registration No. 52,917
Attorney for Applicants

MRD/lkd
Washington, D.C. 20005-1503
Telephone (202) 721-8200
Facsimile (202) 721-8250
July 2, 2009